

§ 1275.50

segments of the original tape recordings that have been or will be identified as private or personal.

(b) Materials determined to be neither related to abuses of governmental power nor otherwise of general historical significance, and transferred pursuant to paragraph (a) of this section, shall upon such transfer no longer be deemed Presidential historical materials as defined in § 1275.16(a).

[51 FR 7230, Feb. 28, 1986, as amended at 61 FR 17845, Apr. 23, 1996; 64 FR 56678, Oct. 21, 1999]

§ 1275.50 Restriction of materials related to abuses of governmental power.

(a) The Archivist will restrict access to materials determined during the processing period to relate to abuses of governmental power, as defined in § 1275.16(c), when:

(1) The Archivist, in accordance with § 1275.44, is in the process of reviewing or has determined the validity of a claim by any person of a legal or constitutional right or privilege; or

(2) The Archivist, in accordance with § 1275.44, is in the process of reviewing or has determined the validity of a petition by any person of the need to protect an individual's right to a fair and impartial trial; or

(3) The release of the materials would violate a Federal statute; or

(4) The materials are authorized under criteria established by Executive order to be kept secret in the interest of national defense or foreign policy, provided that any question as to whether materials are in fact properly classified or are properly subject to classification shall be resolved in accordance with the applicable Executive order or as otherwise provided by law. However, the Archivist may waive this restriction when:

(i)(A) The requester is engaged in a historical research project; or

(B) The requester is a former Federal official who had been appointed by the President to a policymaking position and who seeks access only to those classified materials which he originated, reviewed, signed or received while in public office; and

(ii) The requester has a security clearance equivalent to the highest de-

36 CFR Ch. XII (7-1-12 Edition)

gree of national security classification that may be applicable to any of the materials to be examined; and

(iii) The Archivist has determined that the heads of agencies having subject matter interest in the material do not object to the granting of access to the materials; and

(iv) The requester has signed a statement, which declares that the requester will not publish, disclose, or otherwise compromise the classified material to be examined and that the requester has been made aware of Federal criminal statutes which prohibit the compromise or disclosure of this information.

(b) The Archivist will restrict access to any portion of materials determined to relate to abuses of governmental power when the release of those portions would constitute a clearly unwarranted invasion of personal privacy or constitute libel of a living person: *Provided*, That if material related to an abuse of governmental power refers to, involves or incorporates such personal information, the Archivist will make available such personal information, or portions thereof, if such personal information, or portions thereof, is essential to an understanding of the abuses of governmental power.

§ 1275.52 Restriction of materials of general historical significance unrelated to abuses of governmental power.

(a) The Archivist will restrict access to materials determined during the processing period to be of general historical significance, but not related to abuses of governmental power, under one or more of the circumstances specified in § 1275.50(a).

(b) The Archivist will restrict access to materials of general historical significance, but not related to abuses of governmental power, when the release of these materials would:

(1) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential; or

(2) Constitute a clearly unwarranted invasion of personal privacy or constitute libel of a living person; or

(3) Disclose investigatory materials compiled for law enforcement purposes,

National Archives and Records Administration

§ 1275.62

but only when the disclosure of such records would:

- (i) Interfere with enforcement proceedings;
- (ii) Deprive a person of a right to a fair trial or an impartial adjudication;
- (iii) Constitute an unwarranted invasion of personal privacy;
- (iv) Disclose the identity of a confidential source, and in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source;
- (v) Disclose investigative techniques and procedures; or
- (vi) Endanger the life or physical safety of law enforcement personnel.

§ 1275.54 Periodic review of restrictions.

The Archivist periodically will assign archivists to review materials placed under restriction by § 1275.50 or § 1275.52 and to make available for public access those materials which, with the passage of time or other circumstances, no longer require restriction. If the archivists are unable to determine whether certain materials should remain restricted, the archivists shall submit the pertinent materials, or representative examples of them, to the Senior Archival Panel described in § 1275.44(d), which shall then have the responsibility for determining if the materials should remain restricted. The Senior Archival Panel may seek the recommendations of the Presidential Materials Review Board, in the manner prescribed in paragraph (e) and (h) of § 1275.46, in making its determination. Before opening previously restricted materials, the Archivist will comply with the notice requirements of § 1275.42(b).

[51 FR 7230, Feb. 28, 1986; 51 FR 8671, Mar. 13, 1986]

§ 1275.56 Appeal of restrictions.

Upon petition of any researcher who claims in writing to the Archivist that the restriction of specified materials is inappropriate and should be removed, the archivists shall submit the pertinent materials, or representative ex-

amples of them, to the Presidential Materials Review Board described in § 1275.46(f). The Board shall review the restricted materials, and consult with interested Federal agencies as necessary. To the extent these consultations require the transfer of copies of materials to Federal officials outside the National Archives and Records Administration, the Board shall comply with the requirements of §§ 1275.26 and 1275.32. As necessary and practicable, the Board shall also seek the views of any person, including former President Nixon, whose rights or privileges might be adversely affected by a decision to open the materials. The Board shall prepare a final written decision, including dissenting and concurring opinions, as to the continued restriction of all or part of the pertinent materials. The Board's decision shall be the final administrative determination. The Archivist will notify the petitioner and other interested persons of the final administrative determination within 60 calendar days following receipt of such petition. If the Board's decision is to open previously restricted materials, the Archivist will comply with the notice requirements of § 1275.42(b).

[51 FR 7230, Feb. 28, 1986, as amended at 61 FR 17846, Apr. 23, 1996]

§ 1275.58 Deletion of restricted portions.

The Archivist will provide a requester any reasonably segregable portions of otherwise restricted materials after the deletion of the portions which are restricted under this § 1275.50 or § 1275.52.

§ 1275.60 Requests for declassification.

Challenges to the classification and requests for the declassification of national security classified materials shall be governed by the provisions of 36 CFR part 1254 of this chapter, as that may be amended from time to time.

§ 1275.62 Reference room locations, hours, and rules.

The Archivist shall, from time to time, separately prescribe the precise location or locations where the materials shall be available for public reference, and the hours of operation and